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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. 08-0160 SI
)	
Plaintiff,)	PLEA AGREEMENT
)	
v.)	
)	
JOHN J. COTA,)	
)	
Defendant.)	
)	

I, John J. Cota, and the United States Attorney's Office for the Northern District of California and the Environmental Crimes Section of the U.S. Department of Justice (hereafter

PLEA AGREEMENT

1 “the government”) enter into this written plea agreement (the “Agreement”) pursuant to Rule
2 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

3 The Defendant’s Promises

4 1. I agree to plead guilty to count three of the captioned indictment charging me
5 with negligently discharging a pollutant in violation of the Clean Water Act, 33 U.S.C. §§
6 1319(c)(1)(A) and 1321(b)(3). I understand that the government must prove beyond a
7 reasonable doubt the following elements of the offense:

- 8 a. Defendant discharged and was a cause of a discharge of a harmful
9 quantity of oil into the navigable waters of the United States;
10 b. Defendant was negligent; and
11 c. Defendant’s negligence was a proximate cause of the discharge.

12 I agree that the maximum penalties and restitution for count three are as follows:

- 13 a. Maximum prison sentence: 1 year
14 b. Maximum fine: \$100,000, or twice
15 the gross gain or loss caused by the
16 offense
(18 U.S.C. 3571(b) & (d))
17 c. Maximum supervised release term: 1 year
18 d. Mandatory special assessment: \$25
19 e. Restitution: As determined by the Court (to
20 include restoration and remediation
damages, response costs and natural
resource damages)

21 I also agree to plead guilty to count four of the captioned indictment charging me with
22 unlawful taking of a migratory bird, in violation of 16 U.S.C. §§ 703 and 707(a). I understand
23 that the government must prove beyond a reasonable doubt the following elements of the
24 offense:

- 25 a. The taking of a migratory bird including Brown Pelicans, (*Pelecanus*
26 *occidentalis*), Marbled Murrelets, (*Brachyramphus marmoratus*), and
27 Western Grebes, (*Aechmophorus occidentalis*); and
28

1 damaged the port side of the ship, punctured two of the ship's fuel tanks and damaged the
2 fendering system on the Delta Tower of the bridge.

3 E. Except in a very general way, I did not discuss the intended passage, including
4 reviewing the paper chart, with the Master or crew nor did they ask me about my
5 intended passage. Additionally, as a result of my experience as a San Francisco Bar
6 Pilot, I had developed a practice that involved using the variable range marker on the
7 ship's radar set at 0.33 miles as a measure of the distance from Yerba Buena Island (YBI)
8 to the center of Delta-Echo span. So long as the radar depicts the variable range marker
9 touching the image of the coast of YBI, the ship will pass safely under the center of the
10 span between the Delta and Echo Towers of the Bay Bridge. I did not explain this
11 method to the Master and crew or how they could assist me using the radars to safely
12 guide the ship in the fog. Further, I did not discuss the location of the Racon or radar
13 beacon that marks the center of the Delta Echo span.

14 F. In the final approach to the San Francisco Bay Bridge, I did not use the radar and
15 the Variable Range Marker. Instead, I relied upon the electronic chart system because I
16 perceived the radar image to be distorted. I did not advise anyone that I was having
17 difficulty with the radar. At 8:21 a.m. and again at 8:28 a.m., I asked the Master about the
18 meaning of two "red triangle" symbols on the electronic chart system, which I did not
19 recognize. I relied upon the Master's responses and understood them to mean that the red
20 triangles marked the center of the Delta-Echo span. Neither the Master nor I verified the
21 meaning of the symbols by consulting the paper chart or the radars. The red triangle
22 symbols actually represented the two red-green-red "nun" buoys that float in front of and
23 behind the Delta tower. At approximately 8:29 a.m., the Bosun radioed a warning in
24 Chinese that he saw the bridge pier through the fog at about the same time I saw the
25 bridge pier. In response, I gave multiple rudder commands that may have prevented far
26 worse damage to the ship and bridge, and potentially a worse oil spill.

27 G. In pleading guilty to the aforementioned offenses, based on the foregoing, I
28 acknowledge that my negligence was a proximate cause of the discharge of
approximately 53,000 gallons of heavy fuel oil into San Francisco Bay. I further
acknowledge the oil spill caused the death of protected migratory birds, including Brown
Pelicans, Marbled Murrelets, and Western Grebes and that I did not have a permit or
authority to discharge oil into the San Francisco Bay or to take migratory birds.

H. In pleading guilty, I also acknowledge the following additional facts concerning
my conduct in 2006 and 2007. In order to perform my role as a Bar Pilot, I was required
to be licensed by both the United States Coast Guard and the State of California. Both the
United States Coast Guard and California required annual physical exams. I was
examined on January 18, 2006 and January 19, 2007, by a physician designated by the
State Board of Pilot Commissioners. During each examination, I was required to sign a
form known as United States Coast Guard Form CG-719K - Merchant Mariner Physical
Examination Report ("Physical Examination Report") filled out by the doctor. In the
year prior to January 18, 2006, I filled prescriptions for at least nine medications. The

2006 Physical Examination Report signed by me listed only two medications. Missing from the disclosure were Provigil (a medication prescribed to treat sleep apnea), Lorazepam (an anti-anxiety medication that had been prescribed as a sleeping aid), Vicodin (a pain medication), Tylenol 4 (a pain medication), Darvon 65 (a pain medication), Zoloft (an anti-depressant prescribed for an off-brand purpose) and Ambien (a sleeping aid). I filled prescriptions for Provigil and Darvon 65 two days prior to the examination. In the year between January 18, 2006, and January 19, 2007, I filled prescriptions for approximately twelve medications. The 2007 form filled out by the physician and signed by me listed seven medications, the form also disclosed that I was being treated for sleep apnea and took Provigil daily. Missing from the 2007 disclosure were Vicodin, Zoloft and Tylenol 4. While the form disclosed the use of Provigil, Alphagan, Darvon 65, Lorazepam, Imitrex (for migraine headaches) and other medications, the form indicated that some of these medications were being used occasionally, when in fact, I refilled many of these prescriptions regularly.

3. I agree to give up all rights that I would have if I chose to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence.

4. I agree to give up my right to appeal my convictions, the judgment, and orders of the Court. I also agree to waive any right I may have to appeal any aspect of my sentence, so long as the Court sentences me in accordance with this Agreement.

5. I agree to waive any right I may have to file any collateral attack on my convictions or sentence, including a petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, or motion under 18 U.S.C. § 3582, at any time in the future after I am sentenced, except for a claim that my constitutional right to the effective assistance of counsel was violated.

6. I agree not to ask the Court to withdraw my guilty pleas at any time after they are entered, unless the Court declines to accept this Agreement and imposes a sentence more severe than agreed to by the parties. I understand that the government may also withdraw from this Agreement if the Court does not accept the agreed upon sentence.

7. I agree that my sentence should be calculated pursuant to the Sentencing

Guidelines. I understand that the Court, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I also agree that the Sentencing Guidelines range will be calculated as follows and that I will not ask for any other adjustment to or reduction in the offense level or for a downward departure and the government will not ask for an upward departure from the Guidelines range:

- | | | |
|----|---|---|
| a. | Base Offense Level (U.S.S.G. § 2Q1.3): | 6 |
| b. | Specific offense characteristics: | |
| | Discharge of a pollutant (U.S.S.G. § 2Q1.3(b)(1)(A)): | +4 |
| | Cleanup required significant expense:
(U.S.S.G. § 2Q1.3(b)(3)) | +4 |
| c. | <u>Acceptance of Responsibility:</u> If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled to a two level reduction for acceptance of responsibility, provided that I forthrightly admit my guilt, cooperate with the Court and the Probation Office in any presentence investigation ordered by the Court, and continue to manifest an acceptance of responsibility through and including the time of sentencing. | -2 |
| d. | Adjusted offense level: | 12 |
| e. | Fine Range:
(U.S.S.G. § 5E1.2(c)(3) & 18 U.S.C. §3571(d)) | \$3,000 to \$30,000
or twice the gross
gain or loss. |

8. The parties agree that a reasonable and appropriate disposition of this case, under the Sentencing Guidelines and 18 U.S.C. § 3553(a), is as follows:

- a. A term of imprisonment of between two and ten months. I understand and agree that the government may argue for a sentence of up to ten months imprisonment. I also understand and agree that I may argue for a sentence of not less than two months imprisonment. I further understand and agree that the ultimate sentence, within this range, will be decided by the Court and both sides will be bound by that sentence so long as it is consistent with this Agreement;

- 1 b. One year of supervised release with conditions to be fixed by the Court;
2 c. A criminal fine as determined by the Court within the Guideline range of
3 \$3,000 to \$30,000;
4 d. A \$35 special assessment to be paid at the time of sentencing;
5 e. With respect to restitution, including environmental restoration and
6 remediation damages, response costs and natural resources damages, the
7 parties agree that the determinations regarding these issues will not be
8 included in the criminal sentence.

9 I agree to pay the special assessment at the time of sentencing.

10 I further understand that I may seek the renewal of my Coast Guard licenses in January
11 2010, and to obtain the return of the license now on deposit with the Coast Guard pursuant to a
12 voluntary deposit agreement entered into between the Coast Guard and me on December 21,
13 2007. I agree, however, that if my licenses are returned and renewed, I will not use my Coast
14 Guard-issued “First Class Pilot” and/or “Master of Motor or Steam Vessels of not more than
15 1600 Gross Tons” licenses during the one-year period of supervised release. No other licenses
16 or endorsements—including my license as a Third Mate—is affected by this Agreement and I
17 may seek to renew and use these other licenses unless otherwise prohibited by the Coast Guard.

18 I understand that the United States Coast Guard has independent regulatory authority to
19 suspend, revoke, or not re-issue any maritime licenses. In the event that I apply for any renewal
20 of a license or endorsement, I agree to make all medical and prescription records requested
21 available to the Coast Guard.

22 I agree that, regardless of any other provision in this Agreement, the government may
23 and will provide to the Court and the Probation Office all information relevant to the charged
24 offenses or the sentencing decision.

25 9. I agree not to commit or attempt to commit any crimes before sentence is
26 imposed or before I surrender to serve my sentence. I also agree not to violate the terms of my
27

1 pretrial release; not to intentionally provide false information to the Court, the Probation Office,
2 Pretrial Services, or the government; and not to fail to comply with any of the other promises I
3 have made in this Agreement.

4 I agree that, if I fail to comply with any promises I have made in this Agreement, then the
5 government will be released from all of its promises in this Agreement, including those set forth
6 in paragraphs 12 through 14 below, but I will not be released from my guilty pleas.

7 10. I agree that this Agreement contains all of the promises and agreements between
8 the government and me, and I will not claim otherwise in the future.

9 11. I agree that this Agreement binds the U.S. Attorney's Office for the Northern
10 District of California and the Environmental Crimes Section of the U.S. Department of Justice
11 only, and does not bind any other federal, state, or local agency.

12 The Government's Promises

13 12. The government agrees to move to dismiss any open charges pending against the
14 Defendant in the captioned indictment at the time of sentencing.

15 13. The government agrees not to bring any additional criminal charges or to initiate
16 any further criminal prosecution against the Defendant for any other related environmental
17 offenses or other offenses that could have been filed as a result of this incident or the
18 investigation that led to the above-captioned indictment, committed before the date of this
19 Agreement and which are known to the government at the time of the signing of this Agreement.

20 14. The government agrees that the reasonable and appropriate sentence in this case
21 should be as set forth in paragraph 8 above, unless the defendant violates the Agreement as set
22 forth in paragraphs 8 through 9.

23 The Defendant's Affirmations

24 15. I confirm that I have had adequate time to discuss this case, the evidence, and this
25 Agreement with my attorney, and that he has provided me with all the legal advice that I
26 requested.

1 16. I confirm that while I considered signing this Agreement, and at the time I signed
2 it, I was not under the influence of any alcohol, drug, or medicine.

3 17. I confirm that my decision to enter a guilty plea is made knowing the charges that
4 have been brought against me, any possible defenses, and the benefits and possible detriments of
5 proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no
6 one coerced or threatened me to enter into this Agreement.

7
8 Dated: _____

JOHN JOSEPH COTA
Defendant

11
12 JOHN C. CRUDEN
13 Acting Assistant Attorney General
14 Environment and Natural Resources
Division
United States Department of Justice

15 Dated _____

RICHARD A. UDELL
Senior Trial Attorney
Environmental Crimes Section

18
19 JOSEPH P. RUSSONIELLO
20 United States Attorney

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22 Dated: _____

JONATHAN SCHMIDT
STACEY GEIS
Assistant United States Attorneys

23
24
25 Dated: _____

CHRISTOPHER TRIBOLET
Special Assistant United States Attorney

1 I have fully explained to my client all the rights that a criminal defendant has and all the
2 terms of this Agreement. In my opinion, my client understands all the terms of this Agreement
3 and all the rights he is giving up by pleading guilty, and, based on the information now known to
4 me, his decision to plead guilty is knowing and voluntary.
5

6 Dated: _____

JEFFREY L. BORNSTEIN
Attorney for Defendant